IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.3261 OF 2007

Shyam Ramchandra Kunkule — Petitioner
vs.
Mrs.Gangotri Shyam Kunkule — Respondent

Mrs.Geeta Mulekar for the petitioner.

Mr.M.B. Pahane for the respondent.

**CORAM : ANOOP V. MOHTA,J.**

**DATED : 29th October, 2007**

**P.C.**

By the present writ petition, a challenge has been raised to the impugned Order dated 6.10.2006 passed by the learned Family Court, Bandra, Mumbai in Interim Application No.12/2005 in Petition No.C-5 of 2005. By the impugned order, the learned Judge of the Family Court held that the respondent, a second wife and son are entitled for maintenance.

2. Admittedly, the respondent-original petitioner no.1 is the second wife. There is no dispute about her status. Admittedly, the application was under Section 18 of the Hindu Adoption & Maintenance Act, 1956 (HAMC Act) and a male child namely, Govind was borne out of their so-called marriage. The said marriage was performed, as alleged, as the first wife was unable to

conceive, but lateron after the birth of Govind, the said first wife returned and she too conceived. The whole foundation of the second marriage therefore at this stage of the proceeding itself is no ground to regularise and/or permit the second marriage. Therefore, the fact remains that marriage of petitioner with respondent was during the subsistence of first marriage. Now the question is therefore entitlement of maintenance as claimed under Section 18 of HAMC Act.

3. In so far as the grant of maintenance to the Govind, a minor, there cannot be any dispute and the learned counsel for the petitioner also fairly makes submission that the petitioner is ready for the same, but the challange is to the quantum. Strong reliance has been placed on the salary certificate which shows that the monthly income of the petitioner is Rs.4,890/-. He has to maintain six members of the family including Govind. Therefore, taking note of all this, I am of the view that the amount of Rs.1500/- as directed need to be reduced to Rs.1,000/- per month insofar as Govind is concerned. The petitioner need to maintain all other members of the family also. Admittedly, Govind is with the respondent. Taking all this into account, so far as the maintenance as awarded in favour of Govind is retained, but only to the extent of Rs.1,000/- per month.

4. Insofar as original petitioner-respondent no.1-wife is concerned, the Division Bench of this Court in **Mrs.Ranjana A. Desai vs. Ashokrao Y. Desai in First Appeal No.90/2003 decided on 8.12.2003,** after considering quite similar facts and circumstances and the provisions of Section 18 of the HAMC Act and Hindu Marriage Act, 1955, Section 25, held as under:

> "11. We see no reason either to exclude the personal law or the provisions of the personal law contained within it while deciding the marital status of the Appellant for the purpose of deciding the maintainability of an application under section 18 of the Hindu Adoption and Maintenance Act, 1956. We are unable to find any reason to ignore the provisions of Hindu Marriage Act, 1955 while determining whether a person is a "wife" within the meaning of that expression in section 18 of the Hindu Adoption and Maintenance Act, 1956.
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> 15. The Hindu Adoptions and Maintenance Act, 1956 thus draws a clear distinction between a wife and a concubine. The Appellant's status is that of a concubine. Section 18(1) provides that a Hindu "wife" shall be entitled to be maintained by her husband during her life time. It does not provide that a concubine is also similarly entitled to be maintained. There is nothing in the Hindu Adoptions & Maintenance Act, 1956 that persuades us to conclude that the expression "wife" therein includes a person who is not legally wedded."

5. In view of the Division Bench judgement, I have no option but to follow the said judgement in all respects and specially as it also covers the facts and circumstances of the present case.

6. The learned counsel for the respondent, however, has strongly relied on the following two judgements of the Supreme Court: (1) The case of **Rameshchandra R. Daga vs. Rameshwari R. Daga, (2005) 2 SCC 33.** The facts and circumstances in that case were different in all respects. There was no consideration referring to Section 18 of the HAMC Act. That judgement was based upon the Hindu Marriage Act. (2) The case of **Suresh Khullar vs. Vijay Khullar, (2005) 12 SCC 166.** In that case pending the contested issue about the validity of the marriage the Supreme Court has directed to pay interim maintenance based upon Section 18 of the HAMC Act. There is no such question involved here as admittedly there is no dispute or contest to this issue about the marriage in question. Admittedly second marriage was performed during the existence of first marriage itself.

7. On these facts, therefore, the judgement in Mrs.Ranjana Desai (Supra) covers in detail all the term "wife" and "void", "right of second wife/mistress" and thereby rejected such application/prayer for maintenance under Section 18 of the HAMC Act of second wife.

8. In the result, the petition is partly allowed. The impugned order dated 6.10.2006 is quashed and set aside

in reference to respondent-original petitioner no.1, however, with liberty to take appropriate proceedings in accordance with law if available. Insofar as the child-Govind is concerned, the petitioner to pay Rs.1,000/- per month instead of Rs.1,500/- as awarded and pay the arrears if any, from the date of order, within six weeks.

9. The petition is disposed of accordingly with the above terms.

[ANOOP V. MOHTA,J.]